

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
AT KANSAS CITY**

**SCREAM, LLC d/b/a
MYSTERY.COMEDY**

**Plaintiff /
Counterclaim Defendant**

v.

**WYNDHAM VACATION RESORTS,
INC., f/k/a FAIRFIELD RESORTS, INC.**

and

**WYNDHAM RESORT DEVELOPMENT
CORP., f/k/a TRENDWEST RESORTS,
INC.**

**Defendants /Counterclaimants /
Third Party Plaintiffs**

and

REBECCA STEVENS, individually

Third Party Defendant.

Case No. 4:09-CV-00380-DW

**SCREAM, LLC’S and REBECCA STEVENS’S
JOINT MOTION TO DISMISS
for 12(b)(6) FAILURE TO STATE A CLAIM**

COMES NOW, Counterclaim Defendant, Scream, LLC d/b/a Mystery.COMedy (“Scream, LLC”) and Third Party Defendant Rebecca Stevens, (for convenience, collectively “Counterdefendants”) by and through counsel, and moves to dismiss this action under Rule 12(b)(6) of the Federal Rules of Civil Procedure for the reasons stated herein, as more fully set

forth in the Memorandum in Support filed herewith and incorporated herein by reference.

1. Wyndham Vacation Resorts, Inc. and Wyndham Resort Development, Corp.'s (for convenience, collectively "Counterclaimants") counterclaim / third party complaint ("Counterclaim") alleges that both Scream LLC and Rebecca Stevens individually have committed a conversion. The Counterclaim fails to state a claim on which relief may be granted.

2. The legal elements of conversion have not been comprehensively pleaded, in that the Counterclaimants have not and cannot show that the alleged misappropriation by the Counterdefendants was to the exclusion of the rights of possession of the Counterclaimants. Therefore, the Counterclaim has failed to state a proper claim for conversion.

3. In addition, the Counterclaim fails to assert facts that can fully support the elements for a claim of conversion, and rely only upon legal conclusions and recitation of (most of) the elements of conversion to make their claim. Such a pleading is insufficient as a matter of law.

WHEREFORE, Counterdefendants Scream, LLC and Rebecca Stevens pray that the Court will dismiss with prejudice the Counterclaim of the Counterclaimants for failure to state a claim upon which relief can be granted; for the costs of this action; and such other and further relief as the court deems just and proper.

Respectfully submitted,

/s/ Terry L. Lawson, Jr.

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic means, this 26th day of August to:

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ATTORNEY FOR DEFENDANTS

/s/ Terry L. Lawson, Jr.

TERRY L. LAWSON, JR.

ATTORNEY FOR PLAINTIFF